

CLINTON SPARKS,	)	
	)	
Plaintiff,	)	
vs.	)	Case No.: 2:11-cv-00973-GMN-VCF
	)	
HRHH HOTEL, LLC; HRHH	)	<b>ORDER</b>
HOTEL/CASINO, LLC,	)	
	)	
Defendants.	)	
	)	

## I. BACKGROUND

Under “CONTRACT TERMS” the Contract provides:

1 4) HRH CANCELLATION:

2 a) HRH reserves the right to cancel individual engagement dates. HRH  
3 agrees to provide the Manager notice, in writing (including e-mail), of any  
such cancellations a minimum of three (3) weeks in advance of the  
individual engagement date.

4 b) In the event of any such cancellation, there will not be any compensation.

5 \* \* \*

6 6) EXCLUSIVITY:

7 a) Talent agrees not to perform at any other venues or events within 60 miles  
of Clark County, NV, for the duration of the contract without prior written  
approval from HRH.

8 b) In the event that the contract is terminated, Talent agrees not to perform at  
9 any other venues within 60 miles of the greater Las Vegas area for 60 days  
following the date of termination, without express written permission from  
10 HRH.

11 Plaintiff began the residency and performed at Vanity Nightclub's grand opening party  
12 on January 2, 2010. On April 20, 2010, HRHH told Plaintiff that it was canceling all remaining  
13 engagements and ending Plaintiff's residency effective April 17, 2010.

14 Based on these events, Plaintiff filed the instant lawsuit. Plaintiff's Amended Complaint  
15 (ECF No. 5) against HRHH Hotel, LLC, and HRHH Hotel/Casino, LLC, asserts two claims for  
16 relief: Breach of Written Contract and Breach of Implied Covenant of Good Faith and Fair  
17 Dealing.

18 Along with their Answer, Defendants filed a Counterclaim for Declaratory Judgment.  
19 (ECF No. 11.) In the Counterclaim, Defendants request that the Court declare "that the  
20 Performance Contract gave it the right to terminate the parties' agreement by cancelling  
21 Plaintiff's remaining engagements with three weeks [sic] notice." (*Id.* at 7:5-7.) Now, with the  
22 instant motion, Defendants request summary judgment on their counterclaim.

23 **II. LEGAL STANDARD**

24 The Federal Rules of Civil Procedure provide for summary adjudication when the  
25 pleadings, depositions, answers to interrogatories, and admissions on file, together with the

1 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant  
2 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that  
3 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
4 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable  
5 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if  
6 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict  
7 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th  
8 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A  
9 principal purpose of summary judgment is “to isolate and dispose of factually unsupported  
10 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

11 In determining summary judgment, a court applies a burden-shifting analysis. “When  
12 the party moving for summary judgment would bear the burden of proof at trial, it must come  
13 forward with evidence which would entitle it to a directed verdict if the evidence went  
14 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing  
15 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*  
16 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In  
17 contrast, when the nonmoving party bears the burden of proving the claim or defense, the  
18 moving party can meet its burden in two ways: (1) by presenting evidence to negate an  
19 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving  
20 party failed to make a showing sufficient to establish an element essential to that party’s case  
21 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–  
22 24. If the moving party fails to meet its initial burden, summary judgment must be denied and  
23 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,  
24 398 U.S. 144, 159–60 (1970).

25 ///

### 1 **III. DISCUSSION**

2 In diversity actions, federal courts apply substantive state law. *Erie R. Co. V. Tompkins*,  
3 304 U.S. 64, 78 (1938). Under Nevada law, actions for declaratory judgment may be  
4 maintained pursuant to Nevada Revised Statutes 30.040, which provides:

5 Any person interested under a deed, written contract or other writings  
6 constituting a contract, or whose rights, status or other legal relations are  
7 affected by a statute, municipal ordinance, contract or franchise, may  
8 have determined any question of construction or validity arising under  
the instrument, statute, ordinance, contract or franchise and obtain a  
declaration of rights, status or other legal relations thereunder.

9 In Nevada, “[a] court has the obligation to enforce an unambiguous agreement as written,  
10 absent conflict with statute, offense to public policy, ambiguity, fraud, unconscionability, or  
11 other recognized basis for avoidance.” *Easton Bus. Opportunities v. Town Executive Suites*, 230  
12 P.3d 827, 835 (Nev. 2010). Courts “effectuate the intent of the parties, which may be  
13 determined in light of the surrounding circumstances if not clear from the contract itself.” *Davis*  
14 *v. Nevada Nat. Bank*, 737 P.2d 503, 505 (Nev. 1987). “The parties’ intentions regarding a  
15 contractual provision present a question of fact.” *Anvui, LLC v. G.L. Dragon, LLC*, 163 P.3d  
16 405, 407 (Nev. 2007). “If there is an ambiguity requiring extrinsic evidence to discern the  
17 parties’ intent, summary judgment is improper.” *Dickenson v. State, Dept. of Wildlife*, 877 P.2d  
18 1059, 1061 (Nev. 1994) (per curiam) (citing *Mullis v. Nevada Nat. Bank*, 654 P.2d 533, 535  
19 (Nev. 1982)). Therefore, summary judgment is not appropriate if the Court finds that the  
20 contract is ambiguous as to the parties’ intent.<sup>1</sup>

---

21  
22  
23 <sup>1</sup> Plaintiff argues correctly that “ambiguities are to be construed against the party . . . who drafted the agreement  
24 or selected the language used.” *Davis*, 737 P.2d at 505. Also, “[a]n interpretation which results in a fair and  
25 reasonable contract is preferable to one that results in a harsh and unreasonable contract. *Dickenson*, 877 P.2d at  
937 (citing *Sterling v. Goodman*, 719 P.2d 1262, 1263 (Nev. 1986)). However, this “rule that contracts should  
be construed against the drafter – *contra proferentem* – applies only ‘as a rule of last resort when the contract is  
ambiguous or unconscionable.’” *Easton*, 230 P.3d at 835 n.5 (quoting *Thompson v. Amoco Oil Co.*, 903 F.2d  
1118, 1121 n.3 (7th Cir. 1990)). Furthermore, since a motion for summary judgment may be denied where  
ambiguity is found, this rule is not applied here.

1 In the Counterclaim, Defendants request an order dismissing Plaintiff's Amended  
 2 Complaint with prejudice and a declaratory judgment "that the terms of Performance Contract  
 3 gave HRHH the right to terminate the Performance Contract by cancelling Counter-Defendant  
 4 Sparks' remaining engagements on three weeks [sic] written notice, and that Counter-  
 5 Defendant Sparks was prohibited from performing at other venues within 60 miles of the  
 6 greater Las Vegas area for 60 days following that termination." (Defs.' Answer and Countercl.,  
 7 7:10-15.)

8 Defendants allege that "[a]fter several weeks and numerous customer complaints about  
 9 his performances, it became apparent that Sparks was not a good fit at Vanity." (*Id.* at 6:10-11.)  
 10 Defendants rely upon the HRH Cancellation clause, "Section 4(a) of the Performance Contract  
 11 gives HRHH the right to cancel engagement dates upon three weeks [sic] written notice to  
 12 Sparks' manager," and that "[t]he contract does not limit on the number of engagement dates  
 13 that HRHH may cancel." (*Id.* at 6:12-15.) Defendants also point to Section 6(b) of the  
 14 Exclusivity clause which states that "[t]he Performance Contract provides for termination prior  
 15 to its natural expiration." (*Id.* at 6:16-20.)

16 The relevant clauses are as follows:

17 **Section 4. HRH CANCELLATION:**

- 18 a) HRH reserves the right to cancel individual engagement dates. HRH agrees  
 19 to provide the Manager notice, in writing (including e-mail), of any such  
 20 cancellations a minimum of three (3) weeks in advance of the individual  
 21 engagement date.  
 22 b) In the event of any such cancellation, there will not be any compensation.

23 **Section 6. EXCLUSIVITY:**

- 24 b) In the event that the contract is terminated, Talent agrees not to perform at  
 25 any other venues within 60 miles of the greater Las Vegas area for 60 days  
 following the date of termination, without express written permission from  
 HRH.

///

1 As a threshold matter, the Court must determine whether the Contract is clear on its face,  
2 or if it is ambiguous. If the intent of the parties can be determined from the plain language of  
3 the text, there is no ambiguity. However, if the language of the contract is susceptible to more  
4 than one reasonable meaning or interpretation, it is ambiguous. The question before the Court  
5 is whether Defendants had the right, pursuant to the Contract terms, to terminate the parties'  
6 agreement by cancelling all of the Plaintiff's remaining engagements with three weeks' notice.

7 Here, the Court finds that the phrase "[i]n the event that the contract is terminated" in  
8 Section 6. Exclusivity clause, clearly indicates that the parties contemplated a possible  
9 termination of the entire contract, and not solely "individual engagement dates" as described in  
10 the cancellation clause.

11 However, the Court also finds that the presence of the word "individual" is significant as  
12 a modifier to the engagement dates Defendants reserved the right to cancel in the cancellation  
13 clause. If the cancellation clause was intended to reserve Defendants' rights to cancel *all*  
14 *remaining* engagement dates left in the one-year contract term, the inclusion of the word  
15 "individual" would be superfluous in the context of a *cancellation* clause, as opposed to a  
16 termination clause, for example. As Defendants recognize in the motion, courts should not  
17 interpret a contract so as to render its provisions meaningless, and should give effect to every  
18 word in the contract. *Musser v. Bank of America*, 964 P.2d 51, 54 (Nev. 1998) (per curiam);  
19 *Caldwell v. Consol. Realty and Mgmt. Co.*, 668 P.2d 284, 287 (Nev. 1983).

20 Defendants correctly point out that nothing in the contract limits the number of shows  
21 that Defendants could cancel. However, even though the cancellation clause refers to "dates"  
22 and "cancellations" in the plural, the Court does not find that this cancellation provision  
23 unambiguously provides for termination of the entire Contract, which is described as having a  
24 "1 year contract term."


25 Plaintiff's interpretation is that the language of the Contract does not state that

1 Defendants had the right to cancel the entire agreement. The Court finds that this construction  
2 has merit, and is a reasonable interpretation of the plain language of the Contract. Accordingly,  
3 the Court finds that the terms of the Contract are ambiguous as to the means by which the  
4 parties may terminate the Contract, and that summary judgment must be denied.

5 **IV. CONCLUSION**

6 **IT IS HEREBY ORDERED** that Defendants' Motion for Partial Summary Judgment  
7 (ECF No. 13) is **DENIED**.

8 **DATED** this 31st day of May, 2012.

9  
10  
11   
12 \_\_\_\_\_  
13 Gloria M. Navarro  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25